

# MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT

## DIVISION OF CREDIT UNIONS

### NEWSLETTER

Volume 6, Number 11, December 9, 2004

#### CHECK 21

##### Check 21 Disclosures

Disclosures must be provided to members with the first regularly scheduled communication after 10/28/04 (the effective date of Check 21). This disclosure may be provided through regular postal service or through e-mail **if** the member has agreed to this form of receiving account information. Members may not waive the right to receive the disclosures.

The initial disclosure must be made to any member who currently receives his/her original draft in the monthly statement. You may choose to send an initial disclosure to all members to ensure compliance with the regulation.

When a substitute check is provided to the member, a disclosure must also be present. Model language of the disclosure is found below.

##### **Substitute Check Policy Disclosure Substitute Checks and Your Rights [IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT]**

##### **What is a substitute check?**

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

##### **What are my rights regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong

amount from your account or that we withdrew money from your account more than once for the same check.) The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (amount, not lower than \$2500) of your refund (plus interest if your account earns interest) within (number of days, not more than 10) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than (number of days, not more than 45) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

##### **How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (contact information, for example phone number, mailing address, e-mail address). You must contact us within (number of days, not less than 40) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances. Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and

- A copy of the substitute check [and/or] the following information to help us identify the substitute check: (identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check).

*(This is the third and final article in the series on Check 21)*

## FIELD OF MEMBERSHIP UPDATE

**Springfield Telephone Employees Credit Union** (now **Telcomm Credit Union**) submitted an application to include those persons who reside or work in the 417 telephone Area Code and the 573 (bordered on the north by I-70) telephone Area Code. The Director approved the expansion of **Springfield Telephone Employees Credit Union** to those in the 417 Area Code, but not the 573 Area Code. The decision was published in the November 15, 2000 Missouri Register. On November 30, 2000 the Missouri Bankers Association (MBA) and Century Bank of the Ozarks (CBO) filed an appeal of the decision to the Credit Union Commission. The Commission heard the appeal on March 29, 2001. On May 24, 2001 the Commission upheld the decision of the Director. On August 16, 2001, the decision was released and the Director filed **Springfield Telephone Employees Credit Union's** amended bylaws with the Secretary of State. On September 14, 2001, the MBA and CBO filed a petition for administrative review in Cole County Circuit Court.

On November 19, 2001, a hearing was held before Judge Tom Brown, Division 1, Circuit Court of Cole County. The motion to refer the case to another division of the court was granted and the case was referred to Judge Byron Kinder, Division 2. A motion to dismiss the case for lack of standing was heard on January 3, 2002. On January 29, 2002 the court ruled the plaintiffs lack standing to maintain causes of action set forth in their petition and ordered the plaintiffs' petition be dismissed. On March 11, 2002 the MBA and CBO filed an appeal of the decision in the Western Appellate Court of Appeals. Appellant's briefs were due June 3, 2002 with the respondent's briefs due July 3, 2002. A hearing by the Western Appellate Court was held on October 3, 2002 in Kansas City. On January 14, 2003, the Appellate Court upheld the decision of Cole County Circuit Court. On January 14, 2003, the MBA and CBO filed motions for a rehearing and transfer to the Missouri Supreme Court. The Appellate Court on March 4, 2003 denied the motions. On April 23, 2003, the Missouri Supreme Court issued an order transferring the case to their jurisdiction. On December 9, 2003 the Court reversed the decision of the lower courts and remanded the case. The opinion can be read at

<http://www.osca.state.mo.us/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/d1c9a3590b16be4286256df6006dbc43?OpenDocument>.

The case has now been combined with **South Community Credit Union, Central Communications Credit Union, Educational Employees (Vantage)**

**Credit Union and City Utilities Credit Union.** A hearing was held September 27, 2004. Parties are to submit discovery schedule by October 8, 2004. Case was placed on Dec. 13, 2004 law day docket at 1:30 p.m. for review.

**South Community Credit Union** submitted an application for those who work or reside in Zip Codes 63109, 63111, 63116, 63123, 63125, 63128, 63129, and Crawford County, Franklin County, Gasconade County and Washington County. **Central Communications Credit Union** submitted an application for those persons who reside or work in the 816 telephone Area Code. The Director approved the applications submitted by **South Community and Central Communications Credit Unions**. These decisions were published in the November 15, 2000 Missouri Register. On November 30, 2000 the MBA and two local banks located in each of the two applicants' field of membership expansion areas filed appeals of the decisions to the Credit Union Commission. The Commission received the record of appeals from all parties on May 24, 2001. On August 9, 2001, the Commission upheld the decisions of the Director. The written decisions were released on January 25, 2002. On February 21, 2002, the MBA and the local banks filed a petition for administrative review in Cole County Circuit Court. Both cases were assigned to Judge Tom Brown, Division 1. On April 17, 2002 the cases were reassigned to Judge Byron L. Kinder, Division 2 and a motion was entered to stay the proceedings until the outcome of the Springfield Telephone Employees case was decided. The cases can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; the case numbers are 02CV323402 and 02CV323401. The case has now been combined with **South Community Credit Union, Central Communications Credit Union, Educational (Vantage) Credit Union and City Utilities Credit Union**. A hearing was held September 27, 2004. Parties are to submit discovery schedule by October 8, 2004. Case was placed on Dec. 13, 2004 law day docket at 1:30 p.m. for review.

**Vantage Credit Union** (formerly **Educational Employees Credit Union**) submitted an application for those who live or work in St. Louis County, St. Charles County, Jefferson County, Cape Girardeau County and Franklin County. The application was published in the December 15, 2000 Missouri Register. The Director approved the application and his decision was published in the February 15, 2001 Missouri Register. On March 1, 2001 the MBA and two banks located in the applicant's field of membership expansion area filed an appeal of the decision to the Credit Union Commission. The Commission received the record of appeal of **Educational Employees Credit Union** on October 19, 2001 and established briefing schedules. On March 5, 2002, the Commission dismissed the appeal due to lack of standing. On July 18, 2002 the MBA and the two banks filed a Petition in Mandamus in Cole County

Circuit Court. On May 22, 2004 an amended petition was filed. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 02CV324797. The case has now been combined with **South Community Credit Union, Central Communications Credit Union, Educational (Vantage) Credit Union and City Utilities Credit Union**. A hearing on a motion to dismiss was held on August 4, 2004 in Cole County Circuit Court. A hearing was held September 27, 2004. Parties are to submit discovery schedule by October 8, 2004. Case was placed on Dec. 13, 2004 law day docket at 1:30 p.m. for review.

**City Utilities Credit Union** submitted an application for community residents and workers in Greene and Christian Counties. The application was published in the June 1, 2001 Missouri Register. The Director approved the application and his decision was published in the August 1, 2001 Missouri Register. On August 14, 2001 the MBA and a local bank located within the applicant's field of membership expansion area filed an appeal of the decision to the Credit Union Commission. On August 8, 2002 the Commission heard and denied the appeal for lack of standing. The decision was released on December 9, 2002. On January 2, 2003, MBA and the local bank filed a Petition in Mandamus in Cole County Circuit Court. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 03CV323001. The case has now been combined with **South Community Credit Union, Central Communications Credit Union, Educational (Vantage) Credit Union and City Utilities Credit Union**. A hearing on a motion to dismiss was held on August 4, 2004 in Cole County Circuit Court. A hearing was held September 27, 2004. Parties are to submit discovery schedule by October 8, 2004. Case was placed on Dec. 13, 2004 law day docket at 1:30 p.m. for review.

**First Community Credit Union** submitted an application for individuals who reside or work in the counties of Lincoln, Warren, Franklin, Washington, St. Francois, Ste. Genevieve, Pike, Montgomery, Gasconade and Crawford in the state of Missouri and the City of St. Louis. The application was published in the August 1, 2002 Missouri Register. The Director approved the application and his decision was published in the September 16, 2002 Missouri Register. On September 26, 2002 the MBA and a local bank located within the field of membership expansion area filed an appeal of the decision to the Credit Union Commission. On November 19, 2003 the Commission heard the appeal. On January 13, 2004 the Commission upheld the decision of the Director. The written decision was released on February 25, 2004. On March 19, 2004 the MBA and a local bank filed a petition for administrative review in Cole County Circuit Court. On April 13, 2004 a docket entry 'Order to Stay Proceedings' was entered. The case can be followed on the internet at

<http://casenet.osca.state.mo.us/casenet/>; case number 04CV323859.

**Alliance Credit Union** submitted an application for those who work or reside in St. Charles County or St. Louis County. The application was published in the November 15, 2002 Missouri Register. The Director approved the application and his decision was published in the January 16, 2003 Missouri Register. On January 30, 2003, the MBA and Allegiant Bank filed an appeal of the Director's decision with the Credit Union Commission. On November 19, 2003 the Commission heard the appeal. On January 13, 2004 the Commission upheld the decision of the Director. The written decision was released on February 25, 2004. On March 19, 2004 the MBA and a local bank filed a petition for administrative review in Cole County Circuit Court. On April 13, 2004 a docket entry 'Order to Stay Proceedings' was entered. The case can be followed on the internet at

<http://casenet.osca.state.mo.us/casenet/>; case number 04CV323857.

**St. Louis Postal Credit Union** submitted an application for those who live or work in the Zip Codes 63005, 63017, 63042, 63043, 63044, 63126, 63127 and St. Charles County. The application was published in the December 2, 2002 Missouri Register. The director approved the application and his decision was published in the January 16, 2003 Missouri Register. On January 30, 2003, the MBA and Midwest Bank Centre filed an appeal of the Director's decision with the Credit Union Commission. On November 19, 2003 the Commission heard the appeal. On January 13, 2004 the Commission upheld the decision of the Director. The written decision was released on February 25, 2004. On March 19, 2004 the MBA and the local bank filed a petition for administrative review in Cole County Circuit Court. On April 13, 2004 a docket entry 'Order to Stay Proceedings' was entered. The case can be followed on the internet at

<http://casenet.osca.state.mo.us/casenet/>; case number 04CV323855.

**United Community Credit Union**, an Illinois chartered credit union, submitted an application for those who live or work in the Missouri counties of Lewis, Ralls and Marion. The application was published in the January 2, 2003 Missouri Register. The director approved the application and his decision was published in the February 18, 2003 Missouri Register. On March 4, 2003 the MBA and the Farmers and Merchants Bank and Trust Company filed an appeal of the Director's decision with the Credit Union Commission. On November 19, 2003 the Commission heard the appeal. On January 13, 2004 the Commission upheld the decision of the Director. The written decision was released on February 25, 2004. On March 19, 2004 the MBA and the local bank filed a petition for administrative review in Cole County Circuit Court. On April 13, 2004 a docket entry



'Order to Stay Proceedings' was entered. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 04CV323858.

**Aerospace Community Credit Union** submitted an application for those who live or work in the remainder of St. Louis City, St. Louis County and St. Charles County that is not currently in the **Aerospace Community Credit Union's** field of membership and those who live or work in Lincoln County. The application was published in the May 1, 2003 Missouri Register. The director approved the application and his decision was published in the July 1, 2003 Missouri Register. On July 14, 2003 the MBA and the First National Bank of St. Louis filed an appeal of the Director's decision with the Credit Union Commission. On November 19, 2003 the Commission heard the appeal. On January 13, 2004 the Commission upheld the decision of the Director. The written decision was released on February 25, 2004. On March 19, 2004 the MBA and the local bank filed a petition for administrative review in Cole County Circuit Court. On April 13, 2004 a docket entry 'Order to Stay Proceedings' was entered. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 04CV323852.

**Midwest United Credit Union** submitted an application for all eligible businesses, government entities, individuals and the immediate family of all eligible individuals who live or work in Platte County, Missouri. The Director approved the application and his decision was published in the April 1, 2004 Missouri Register. On April 14, 2004, MBA and Platte Valley State Bank filed an appeal of the Director's decision with the Credit Union Commission. The Commission will schedule the appeal for hearing.

**Century Credit Union** submitted an application to include persons working or residing in Jefferson County, Missouri. The applications were published in the May 17, 2004 Missouri Register. The Director approved the application and his decision and the findings of fact and conclusions of law were published in the July 1, 2004 Missouri Register. On July 13, 2004, MBA and Midwest Bankcentre filed an appeal of the Director's decision with the Credit Union Commission. On August 26, 2004 the application was amended to include persons working or residing in the Zip Codes of 63016, 63020, 63028, 63049, 63050 and 63051. The application was published in the October 1, 2004 Missouri Register. The Director approved the application and the decision with the findings of fact and conclusions of law was published in the December 1, 2004 Missouri Register. A fifteen calendar day period must occur before the decision is final.

**Lake City Credit Union** submitted an application for persons living or working in the Zip Codes of 64055,

64029 and 64075. The application was published in the September 1, 2004 Missouri Register. The Director approved the application and the decision with the findings of fact and conclusions of law was published in the October 29, 2004 Missouri Register. The decision is now final.

**Northland Teachers Community Credit Union** submitted an application for persons who are living or working in the Zip Codes of 64153 and 64514. The application was published in the October 15, 2004 Missouri Register. The Director approved the application and his decision will be published in the December 15, 2004 Missouri Register. A fifteen calendar day period must follow before the decision is final.

**Edison Credit Union** submitted an application for active or retired employees of Lippert Mechanical, Lucky International Trading, Holiday Inn-North Kansas City, Southwest Technologies, Inc. and Hantover. The application was published in the November 1, 2004 Missouri Register. The Director approved the application and his decision will be published in the December 15, 2004 Missouri Register. A fifteen calendar day period must follow before the decision is final.

**Cape Regional Credit Union** submitted an application for those working or residing in Cape Girardeau County, The application was published in the December 1, 2004 Missouri Register. A ten business day comment period must follow before a decision can be made.

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## From the Director...

### Amended rules:

4 CSR 100-2.045 Member Business Loans and 4 CSR Deposit of Public Funds are being amended. The proposed amendments were published in the December 1, 2004 Missouri Register for a thirty day comment period. No public hearing is scheduled. Anyone may file a statement in support of or in opposition to these proposed amendments with the Director, Division of Credit Unions, PO Box 1607, Jefferson City, Missouri 65102. The proposed amended rules are attached.

### Meeting with credit unions:

With the change from our annual survey to one following the credit union's examination, we are scheduling our meetings with credit unions in March or April 2005. This should ensure the availability of the results from the 2004 survey and good weather for our travel throughout the state.

### Personnel changes:

Effective January 1, 2005 Kevin Weaver is being promoted to Chief Examiner and Ken Bonnot to Deputy Director. Kevin is a ten year employee and a graduate of Lincoln University. Ken is a nine year employee and a graduate of the University of Missouri. Our congratulations to both.

Cindy Taylor on December 31, 2004 will retire following twenty-six years of service to the Division of Credit Unions and Missouri credit unions. We wish Cindy an active retirement.

David Bohrer has announced his retirement effective April 1, 2005. In a future issue more will be written about David's accomplishments.

**Commission meeting:**

The Credit Union Commission next meeting is scheduled for January 13, 2005.

**Call report information:**

End of year call report forms will be sent to credit unions in mid December. All credit unions must complete the entire 5300 long form this cycle. Completed reports are to be submitted to the assigned examiner by January 24, 2005.

**Interest rates:**

The Federal Reserve (the Fed) is continuing to raise rates from a historically very low level. Although some concerns remain about the economy and inflation, the consensus is rates will continue to rise at a "measured" pace. Credit unions must be aware of and remain responsive to changes in market rates. A good policy is to review rates on shares and loans at least as often as the Fed makes adjustments. Failure to do so leads to liquidity and profitability issues.

**Check 21 information:**

The Board of Governors of the Federal Reserve System has issued two consumer publications on Check 21. The ["Consumer Guide to Check 21 and Substitute Checks"](#) describes how the new law may affect consumers and provides information on how to resolve problems associated with the receipt of substitute checks.

A second consumer guide, ["What You Should Know about Your Checks,"](#) discusses more broadly how check payments have changed, including the increased use of electronic check conversion, a process separate from Check 21. In the check conversion process, a consumer authorizes the use of information from their paper check to make an electronic payment at the point of sale or when paying a bill by mail.

These publications are also available from the Federal Reserve Board's Publications Fulfillment, Mail Stop 127, Washington, DC 20551, 202-452-3244.



**John P. Smith, Director**

*markets are more fixed. To stay in business, you need to watch both and change as they do, or before.*

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*Change or Die. Your business must change to survive. As much as we wish it would, nothing stays the same. Some industries change faster than others. Some*